

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:05-cr-00061

DONALD LOWE,

Defendant.

MEMORANDUM OPINION AND ORDER

On June 27, 2005, the court sentenced Donald Lowe to seventy-two months' imprisonment after he pleaded guilty to violating 21 U.S.C. § 841(a)(1) (distribution of hydromorphone) and 18 U.S.C. § 924(c)(1)(A)(I) (using and carrying a firearm during and in relation to a drug trafficking crime). The sentence imposed reflected a sentence of twelve months for the first count and sixty months for the second count. I also imposed a five-year term of supervised release for both offenses. As a condition of his supervised release, I imposed a condition that Lowe be subject to home confinement for the entire supervised-release term. Lowe began serving his sentence on August 8, 2005.

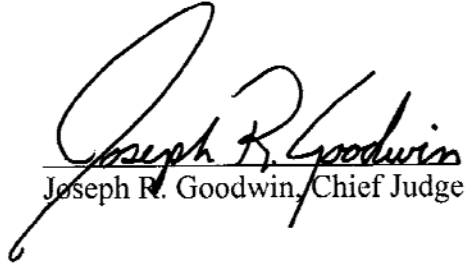
On June 3, 2009, Lowe filed a petition for a writ of habeas corpus with this court under 28 U.S.C. § 2241. By his petition, Lowe sought immediate release from incarceration, on the ground that Supreme Court of the United States had ruled that the conduct underlying his § 924(c)(1)(A)(I) conviction was not an offense against the United States. *See Watson v. United States*, 552 U.S. 74

(2007). I granted the petition, *Lowe v. Cauley*, 2:09-cv-01016 (S.D. W. Va. October 19, 2009), and Lowe was released from federal custody.

Lowe's conviction for violating 21 U.S.C. 841(a)(1) carries a maximum supervised-release term of thirty-six months. I hereby **MODIFY** Lowe's sentence and **ORDER** that he be placed on supervised release for a term of thirty-six months, retroactive to the date he was released from federal custody. Furthermore, Lowe's supervised release is **MODIFIED**, and Lowe is relieved of the condition that he be subject to home confinement.

The court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: January 22, 2010


Joseph R. Goodwin, Chief Judge